IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.09.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. MANIKUMAR

WRIT APPEAL No.389 OF 2003

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Therasammal .. Appellant/Petitioner in WP 4005/2006

vs.

1.The Collector of Kanchipuram
District at Kanchipuram.

2.The Special Tahsildar
Adi Dravida Welfare
Sriperumbudur. .. Respondents/Respondents in WP 4005/96

Writ Appeal filed under Clause 15 of the Letters of Patent against the order of the learned Judge Mr. Justice R. Jayasimha Babu, dated 29.11.2002 made in W.P.No.4005 of 1996 filed under Art.226 of the constitution of India, praying for the issuance of writ of Certiorari to call for the records from the file of the 2nd respondent in respect of RC No.351/91A dated 15.12.95 relating to acquisition of the land comprised in S.No.222 of Molasur Village No.117 of Sriperumbudur Taluk to quash the same.

For appellant :Mr.A.S. Narasimhan

For respondents :Mr.C. Thirumaran
Government Advocate

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JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.)

The above writ appeal is directed against the order of the learned single Judge dated 29.11.2002 passed in W.P.No.4005 of 1996 in and by which the learned Judge, after considering the claim of the petitioner and after finding that there is no merit, dismissed the writ petition.

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2. Heard the learned counsel for the appellant as well as the learned Government Advocate for respondents.

3. The matter relates to the acquisition of land under Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31/78). The only contention urged before us is that the petitioner / appellant was not served with notice in Form I under Sub-section (2) of Section 4 of the Act. When the very same objection was raised before the learned single Judge, the second respondent, Tahsildar, Adi Dravidar Welfare, Sriperumbudur, filed a counter affidavit. The following details furnished in para 4 of his counter affidavit are relevant.

> "4. I submit that therefore the Land Acquisition proceedings were again initiated to acquire the above lands as per the new Act 31/78 to provide House site to Arunthathiars of 117, Molasur Village, Sriperumbudur Taluk. As per the New Act 31/78, Form I notice inviting objection if any for the proposed acquisition was issued to Tvl. Dolphine and Arokiasamy, Thiru Issac Naidu and Tmt. Theresammal to appear for enquiry on 2.1.96 at 11.00 AM in the Office of the Special Tahsildar (ADW), Sriperumbudur Taluk. Thiru Arokiasamy alone received the said notice on 16.12.95 whereas the other land owners have refused to receive the notice. Therefore the said notice was served on these land owners by affixture on 16.12.95. But none of the land owners attended the enquiry on 2.1.96. ...."

4. The above information culled out from the records shows that except Arokiyasamy, other land owners have refused to receive notice dated 16.12.1995. In such circumstances and in view of the attitude on the part the land owners, the said notice was served by affixture on the same day i.e., on 16.12.1995. Though the above mentioned details have been specifically stated by the Special Tahsildar in his counter affidavit, admittedly, those factual details have not been controverted by the petitioner by filing a reply affidavit. The learned counsel for the petitioner by drawing our attention to Rule 3 of the Tamil Nadu Acquisition of Land For Harijan Welfare Schemes Rules,1979, submitted that inasmuch as the petitioner was not residing in the land in question, the authorities ought to have sent notice by registered post with acknowledgment due. It is true that Rule 3 mentions that if the owner or any other person interested in the land resides elsewhere, than where the land is situated, the show cause notice shall be sent by registered post (acknowledgment due) to the last known address of the owner or any other person interested. In this regard, as rightly pointed out by the learned Government Advocate, the petitioner / land owner is not residing elsewhere, but is a resident of a village just 4

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kms. away from the land in question. When the notice in question was sought to be served by an Officer (Village Administrative Officer), if he was really interested, he could have received the same. On the other hand, the specific averment in the counter affidavit of the second respondent shows that the petitioner along with others refused to receive the said notice. In such circumstances, the Village Administrative Officer had no other way, except to adopt the other mode of service, viz., affixture.

5. Though the learned counsel for the petitioner submitted that the endorsement made by the Village Administrative Officer of the neighbouring village is not sufficient and it cannot be construed that there was proper service of notice on the petitioner, this aspect was considered and rightly rejected by the learned single Judge. The point is whether the petitioner was given notice in respect of acquisition proceedings or not. When notice under Sub-section (2) of Section 4 of the Act was sought to be served, if the petitioner was really interested in opposing the acquisition proceedings, nothing prevented him from receiving the same and participating in the enquiry. Unfortunately, such recourse has not been adopted by the petitioner. In the light of the above factual information, which was considered and rejected by the learned single Judge, we are unable to accept the very same contention urged before us.

Except the above contentions, no other ground was urged questioning the order of the learned single Judge. Accordingly, the writ appeal fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Collector of Kanchipuram
District at Kanchipuram.

2.The Special Tahsildar
Adi Dravida Welfare
Sriperumbudur.

+1cc to Govt. Pleader Sr 43520

JP (CO)
km/21.9.

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